P&Z PARTICIPANTS: Kayla Berkson, Francis Boggus, Dory Briles, Abigail Chungath, Chris Draper, Jann Freed, Todd Garner, Lisa Howard, and Emily Webb.


STAFF PARTICIPANTS: Bert Drost, Frank Dunn-Young, Tyler Hall, and Judy Parks-Kruse.

Emily Webb made a motion to approve the August 5, 2021, Plan and Zoning Commission meeting minutes. Motion carried 8-0-1 (Francis Boggus abstained as he was not present for the August 5 meeting).

Dory Briles asked if any members of the public or the Commission wished to speak on consent agenda items #1, #2, #3 or #4. A member of the public requested to speak on item #4.

Jann Freed made a motion to approve consent agenda items #1, #2 and #3
Motion Carried 9-0

Dory Briles stated the applicant for item #5 has requested a continuance to the September 2, 2021 meeting.

Abby Chungath made a motion to continue item #5 to the September 2, 2021 meeting.
Motion Carried 9-0

CONSENT AGENDA PUBLIC HEARING ITEMS

Item 1

Request from Hy-Vee, Inc. (owner), represented by John Brehm (officer), for review and approval of the following for property located at 2540 East Euclid Avenue:

A) Determination as to whether the requested rezoning is in conformance with PlanDSM Creating Our Tomorrow.

B) Rezone property from “MX3” Mixed Use District to “CX” Mixed Use District to bring the existing Large-Format Retail Sales use into a zoning district that is more within the inline with the intent of the Zoning Ordinance for the use including but not limited to accessory outdoor sales with kiosk and canopy for vehicular pick up on online purchases. (ZONG-2021-000005)
STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. Purpose of Request: The applicant is proposing to expand use of the existing 3,100 square feet drive-through at the East Euclid Avenue Hy-Vee grocery store for the Aisles Online grocery pick-up service. The rezoning would facilitate continued and expanded use of the existing drive-through and canopy, including construction of additional pick-up lanes and a permanent 640 square-foot kiosk adjacent to the existing canopy.

2. Size of Site: 306,357 square feet (7.033 acres).


4. Existing Land Use (site): The site contains a 72,770 square-foot, one-story commercial center building with an approximately 3,100-square foot drive-through canopy, an 8,220-square-foot one-story building utilized for banquet and rental purposes, and a surface parking lot.

5. Adjacent Land Use and Zoning:
   - North – “N3a”; Uses are one-household residential.
   - South – “MX3”; Uses are retail, commercial, medical, and religious.
   - East – “P2”; Use is religious assembly.
   - West – “MX3” and “N1b”; Uses are commercial and retail.

6. General Neighborhood/Area Land Uses: The subject property is located at the intersection of East Euclid Avenue and East 26th Street. The area contains a mix of commercial and residential uses.

7. Applicable Recognized Neighborhood(s): The subject property is in the Douglas Acres Neighborhood and within 250 feet of the Fairmont Park Neighborhood. The neighborhood associations were notified of the public hearing by mailing of the Preliminary Agenda on July 30, 2021 and by mailing of the Final Agenda on August 13, 2021. Additionally, separate notifications of the hearing for this specific item were mailed on July 30, 2021 (20 days prior to the public hearing) and August 9, 2021 (10 days prior to the public hearing) to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division on the date of the mailing. The Douglas Acres Neighborhood mailings were sent to Joe Youngwirth, 3824 Lay Street, Des Moines, IA 50317. The Fairmont Park Neighborhood mailings were sent to Jeff Witte, 2501 Morton Avenue, Des Moines, IA 50317.
The applicant is required to conduct neighborhood outreach. They will be available to provide a summary of that outreach during the public hearing.

8. Relevant Zoning History: On February 28, 2018, by Docket No. ZON2018-00009, the Zoning Board of Adjustment conditionally approved an Exception of 106 off-street parking spaces less than the minimum 379 parking spaces required for 64,659 square feet of retail space (1 space per 200 square feet) and 8,250 square feet of banquet hall space (1 space per 150 square feet).


10. Applicable Regulations: Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code, the Commission reviews all proposals to amend zoning boundaries or regulations within the City of Des Moines. Such amendments must be in conformance with the comprehensive plan for the City and designed to meet the criteria in 414.3 of the Iowa Code. The Commission may make recommendations to the City Council on conditions to be made in addition to the existing regulations so long as the subject property owner agrees to them in writing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. PlanDSM Creating Our Tomorrow: The subject property is designated “Community Mixed Use” within a Community Node. Plan DSM describes this designation as follows:

   Community Mixed Use
   Small- to medium-scale mixed use development, located on high-capacity transit corridors or at the intersection of transportation corridors. Community mixed use areas include both a mix of medium density residential and a mix of retail and service establishments designed to attract customers from a large service area encompassing multiple neighborhoods and may include specialty retail that attracts regional customers.

   Community Node
   Mid-sized centers providing a range of daily needs and specialized services within a larger neighborhood context. Consist of a mix of housing, retail, and offices serving a larger population and geographical area than a neighborhood node. May include a shopping district including a grocery and drug store. Residential development including medium and high densities may occur.

Based on these designations, the proposed “CX” Mixed Use District zoning would be found in conformance with the Comprehensive Plan. Staff believes the proposed rezoning is appropriate given the location of the subject property along a high-capacity transportation corridor.
2. **Planning and Design Ordinance:** Any construction must comply with all applicable site plan and design regulations of the Planning and Design Ordinance (Chapter 135 of City Code). Should the rezoning be approved, the applicant would be required to prepare a Site Plan and building elevations for review before the existing use can be expanded.

3. **Drive-Through Facility:** Section 135-2.22.3(D)(1) of the Planning and Design Ordinance requires drive-through facilities to be located on the rear facade of the building or on the interior side of the building in the “CX” District. The proposed development consists of the existing drive-through and canopy and construction of additional pick-up lanes and a permanent 640 square-foot kiosk adjacent to the existing canopy on the east (non-primary street-facing) side of the building. Relocating the drive-through to the north (rear) façade is not practical, as the north façade of the building consists of a 33-foot rear setback adjoining a low-density residential area.

The location of the proposed drive-through canopy addition and kiosk is in the existing parking lot on the east facade of the building, would expand an existing drive-through facility, and would not substantially increase traffic within the parking lot. Landscaping is proposed between the parking lot, the proposed kiosk and the expanded drive-through lanes to provide a buffer. The requested rezoning would not have a substantial or undue adverse effect upon adjacent property, the character of the surrounding area or the public health, safety, and general welfare. Staff believes that the requested rezoning would be in conformance with the land use designation of Community Mixed Use within a Community Node.

**III. STAFF RECOMMENDATION**

Part A) Staff recommends that the requested rezoning be found in conformance with the existing PlanDSM future land use designation of Community Mixed Use within a Community Node.

Part B) Staff recommends approval of the requested rezoning from “MX3” Mixed Use District to “CX” Mixed Use District.

**SUMMARY OF DISCUSSION**

Dory Briles asked if any member of the public or the commission desired to speak on the item. No one requested to speak.

**COMMISSION ACTION:**

Jann Freed made a motion for:

Part A) The requested rezoning be found in conformance with the existing PlanDSM future land use designation of Community Mixed Use within a Community Node.
Part B) Approval of the requested rezoning from “MX3” Mixed Use District to “CX” Mixed Use District.

THE VOTE: 9-0

Item 2

Request from Deborah Darge (Owner) for review and approval of a Public Hearing Site Plan for a Type 2 Design Alternative in accordance with City Code Sections 135-9.2.4(B) and 135-9.3.1(B), for property located at 2908 53rd Street, to allow construction of a 320-square foot detached garage in the rear yard that would be within 2 feet of the south side property line, where a 5-foot minimum setback is required by Section 135-2.22.2(C)(1).

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. Purpose of Request: The applicant is proposing to construct a 16-foot by 20-foot detached garage in the rear yard. The garage is proposed to be within 2-feet of the south side property line. The applicant is replacing a garage on existing foundation that was damaged in the derecho storm in August of 2020.

2. Size of Site: 46 feet by 107 feet (4,943 square feet).

3. Existing Zoning (site): “N3b” Neighborhood District.

4. Existing Land Use (site): The property is currently a one-household dwelling.

5. Adjacent Land Use and Zoning:

   North – “N3b”; Uses are one-household dwellings.
   South – “N3b”; Uses are one-household dwellings.
   East – “P1”; Use is public open space.
   West – “N3b”; Uses are one-household dwellings.

6. General Neighborhood/Area Land Uses: The subject property is located in a residential area that consists primarily of one-household dwellings.

7. Applicable Recognized Neighborhood(s): The subject property is in the Merle Hay Neighborhood. The neighborhood association was notified of the public hearing by mailing of the Preliminary Agenda on July 30, 2021 and by mailing of the Final Agenda on August 13, 2021. Additionally, separate notifications of the hearing
for this specific item were mailed on August 9, 2021 (10 days prior to the public hearing) to the Merle Hay Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All agendas and notices are mailed to the primary contact designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Merle Hay Neighborhood mailings were sent to Chris Morse, 3517 52nd Street, Des Moines, IA 50310.

8. **Relevant Zoning History:** None.

9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Low Density Residential.

10. **Applicable Regulations:** Section 135-2.15.3.A.2 states that for House Type C the required accessory building shall be located in the side or rear yard. Section 135-2.22.1.D.3.a states that the accessory structure should have a minimum 5-foot setback to the side and rear lot lines.

Pursuant to Section 135-9.1.1.B of the Planning and Design Ordinance, the site plan review requirements of Chapter 135 are designed to ensure the orderly and harmonious development of property in a manner that shall:

- Promote the most beneficial relation between present and proposed future uses of land and the present and proposed future circulation of traffic throughout the city;

- Permit present development of property commensurate with fair and orderly planning for future development of other properties in the various areas of the city with respect to the availability and capacity, present and foreseeable, of public facilities and services. The factors to be considered in arriving at a conclusion concerning proposed present development of property shall include the following:

  - The maximum population density for the proposed development, the proposed density of use, and consideration of the effect the proposal will have on the capacity of existing water and sanitary sewer lines to the end that existing systems will not become overloaded or capacity so substantially decreased that site use will inhibit or preclude planned future development;

  - Zoning restrictions at the time of the proposal;

- The city’s comprehensive plan;

- The city’s plans for future construction and provision for public facilities and services; and
• The facilities and services already available to the area which will be affected by the proposed site use;

• Encourage adequate provision for surface and subsurface drainage, in order to ensure that future development and other properties in various areas of the city will not be adversely affected;

• Provide suitable screening of parking, truck loading, refuse and recycling disposal, and outdoor storage areas from adjacent residential districts;

• Encourage the preservation of canopied areas and mature trees and require mitigation for the removal of trees; and

• Consider the smart planning principles set forth in Iowa Code Chapter 18B.

Based on Chapter Section 135-9.2.4 and 135-9.3.1.B of the Planning and Design Ordinance, Type 2 Design Alternatives are to be considered by the Plan and Zoning Commission after a public hearing whereby the following criteria are considered:

• The design alternative provisions of Section 135-9.2.4 are intended to authorize the granting of relief from strict compliance with the regulations of this chapter as part of the site plan or alternate design documentation review process when specific site features or characteristics of the subject property, including the presence of existing buildings, creates conditions that make strict compliance with applicable regulations impractical or undesirable. The design alternative provisions are also intended to recognize that alternative design solutions may result in equal or better implementation of the regulation's intended purpose and greater consistency with the comprehensive plan.

• Consideration of requested design alternatives through the administrative and public hearing review processes will be evaluated on the merits of the applicable request and independently of prior requests from the same applicant, and may include the following criteria:

  ➢ An evaluation of the character of the surrounding neighborhood, such as:
    
    o Whether at least 50% of the developed lots within 250 feet of the subject property are designed and constructed consistently with the requested design alternative(s); and
    
    o Whether the directly adjoining developed lots are designed and constructed consistently with the requested design alternative(s);

• For purposes of this subsection, if the lots that exist within 250 feet of the subject property are undeveloped, then the neighborhood character determination will be based upon the assumption that such lots, as if
developed, comply with the applicable requirements of this chapter for which a design alternative(s) has been requested;

- The totality of the number and extent of design alternatives requested compared to the requirements of this chapter for each site plan or alternate design documentation reviewed;

- Whether the requested design alternative(s) is consistent with all relevant purpose and intent statements of this design ordinance and with the general purpose and intent of the comprehensive plan;

- Whether the requested design alternative(s) will have a substantial or undue adverse effect upon adjacent property, the character of the surrounding area or the public health, safety and general welfare;

- Whether any adverse impacts resulting from the requested design alternative(s) will be mitigated to the maximum extent feasible; and

- Other factors determined relevant by the community development director, plan and zoning commission, or city council as applicable.

II. ADDITIONAL APPLICABLE INFORMATION

1. Garage Location: The applicant would be replacing an existing garage and is requesting a reduced setback in order to utilize the existing garage foundation. The new garage would measure 16 feet by 20 feet and would be within 2 feet of the south side property line.

   Staff believes that the requested design alternative would not have an adverse impact on the adjacent properties, the character of the surrounding area or the public health, safety and general welfare. It would meet the general intent of the code. Staff is supportive of the requested waiver for a reduced side setback.

III. STAFF RECOMMENDATION

Staff recommends approval of the requested Type 2 Design Alternative and the proposed Public Hearing Site Plan subject to compliance with all administrative review comments.

SUMMARY OF DISCUSSION

Dory Briles asked if any member of the public or the commission desired to speak on the item. No one requested to speak.
COMMISSION ACTION:

Jann Freed made a motion for approval of the requested Type 2 Design Alternative and the proposed Public Hearing Site Plan, subject to compliance with all administrative review comments.

THE VOTE: 9-0

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Item 3

Request from McKee Auto Center, Inc. (owner), represented by Anthony McKee (officer), for review and approval of the following for property located at 4131 and 4141 East 14th Street:

A) Determination as to whether the requested rezoning is in conformance with PlanDSM Creating Our Tomorrow.

B) Amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification for 4131 East 14th Street from Community Mixed Use to Industrial. (ZONG-2021-000019)

C) Rezone property from “MX3-V” Mixed Use District and “I1-V” Industrial District to “I1” Industrial District to remove the prohibitions on Vehicle Sales and Trucking and Transportation Terminal uses, and to allow Major Vehicle Maintenance/Repair uses. (ZONG-2021-000003)

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. Purpose of Request: The applicant is proposing to use the site for a vehicle display lot use with an autobody component. The rezoning would eliminate the “-V” zoning designation that is currently applied to both of their parcels that comprise the site. This designation prohibits use of the property for Vehicle Sales and Trucking and Transportation Terminal uses.

The building at 4141 East 14th Street has known environmental issues. The applicant has indicated that they are working with an environmental engineer to clean the site according to the requirements of the City, DNR, and EPA. The applicant intends to demolish the dilapidated building.

Any future construction or site improvements would be subject to compliance with a site plan.
2. **Size of Site:** The property at 4141 East 14th Street measures 40,078 square feet (0.920 acres) and the property at 4131 East 14th Street measures 40,509 square feet (0.930 acres) for a combined 80,587 square feet (1.85 acres).

3. **Existing Zoning (site):** “MX3-V” Mixed Use District and “I1-V” Industrial District.

4. **Existing Land Use (site):** The subject properties to be rezoned consist of two parcels including 4141 East 14th Street and 4131 East 14th Street. The property at 4141 East 14th Street is zoned “I1-V” and contains a 5,708 square-foot, 1-story warehouse that the applicant intends to demolish, and a paved surface parking lot. The property at 4131 East 14th Street is zoned “MX3-V” and contains a 5,708 square-foot, 1-story auto service building, and a paved surface parking lot.

5. **Adjacent Land Use and Zoning:**

   - **North** – “HI” Heavy Industrial (Polk County); Uses include semi-truck repair and sales.
   - **South** – “MX3-V”; Uses are industrial including auto service.
   - **East** – “I1” & “MX3-V”; Uses are industrial including auto repair and auto service.
   - **West** – “I1-V”; Use is office and warehousing.

6. **General Neighborhood/Area Land Uses:** The subject properties are located on the southeast corner of the East 14th Street and East Aurora Avenue intersection. The area contains a mix of commercial, industrial, and residential uses.

7. **Applicable Recognized Neighborhood(s):** The subject property is located within the Highland Park Neighborhood. The neighborhood association was notified of the public hearing by mailing of the Preliminary Agenda on July 19, 2021 (for the August 5, 2021 meeting) and by mailing of the Final Agenda on July 30, 2021 (for the August 5, 2021 meeting) and August 13, 2021 (for the August 19, 2021 meeting). Additionally, separate notifications of the hearing for this specific item were mailed on July 16, 2021 (20 days prior to public hearing for the August 5, 2021 meeting), July 26, 2021 (10 days prior to the public hearing for the August 5, 2021 meeting) and August 9, 2021 (10 days prior to the public hearing for the August 19, 2021 meeting) to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

   All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Services Department on the date of the mailing. The Highland Park Neighborhood Association mailings were sent to Sherri Rosener, 1206 Oak Park Avenue, Des Moines, IA 50313.

   The applicant is required to conduct neighborhood outreach. They will be available to provide a summary of that outreach during the public hearing.
8. **Relevant Zoning History:** On January 18, 2007, the Plan and Zoning Commission conditionally approved a site plan allowing a vehicle display and sales business at 4131 East 14th Street.

The applicant made a previous request for “M-1” zoning on the property, which was withdrawn before consideration at the April 3, 2008, Plan and Zoning Commission meeting.

On April 23, 2012, by Roll Call No. 12-0641, the City Council denied a subsequent request to rezone the site to “M-1” District based upon the applicant’s and tenant’s inability to commit to bringing the chrome plating operation into compliance with Building and Fire Codes.

9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Industrial and Community Mixed Use.

10. **Applicable Regulations:** Taking into consideration the criteria set forth in Chapter 18B of the Iowa Code, the Commission reviews all proposals to amend zoning boundaries or regulations within the City of Des Moines. Such amendments must be in conformance with the comprehensive plan for the City and designed to meet the criteria in 414.3 of the Iowa Code. The Commission may make recommendations to the City Council on conditions to be made in addition to the existing regulations so long as the subject property owner agrees to them in writing. The recommendation of the Commission will be forwarded to the City Council.

II. ADDITIONAL APPLICABLE INFORMATION

1. **PlanDSM Creating Our Tomorrow:** The subject properties are designated as “Industrial” and “Community Mixed Use” on the Future Land Use Map. PlanDSM describes these designation as follows:

   INDUSTRIAL (4141 East 14th Street)
   Accommodates industrial development and limited supporting commercial uses. Development in this classification could have a large impact on adjoining properties and the environment which would need to be mitigated.

   COMMUNITY MIXED USE (4131 East 14th Street)
   Small- to medium-scale mixed use development, located on high-capacity transit corridors or at the intersection of transportation corridors. Community mixed use areas include both a mix of medium density residential and a mix of retail and service establishments designed to attract customers from a large service area encompassing multiple neighborhoods and may include specialty retail that attracts regional customers.

The applicant is proposing to rezone 4141 East 14th Street from “I1-V” to “I1” and 4131 East 14th Street from “MX3-V” to “I1”. The Zoning Ordinance states that “MX3” is intended for mixed-use nodes and corridors within the city, where residents and visitors may access multiple uses by walking and automobile. This district
accommodates higher intensity commercial uses at a smaller scale. “I1” is intended for general industrial uses, warehousing, and transportation terminals.

Section 134-6.3.12 of the Municipal Ordinance states, “There exist within the city of Des Moines segments of commercial corridors wherein the concentration of vehicle sales and rental display lots has reached a level that has discouraged investment and reinvestment in other uses in the area. As retail and service businesses close and property values within the affected corridors decline or fail to rise with the overall market, the most profitable use of the vacant properties is often for additional vehicle sales and rental display lots.

Property should not be rezoned to remove the “-V” extension to allow vehicle sales and rental display lots when the city council has made a determination that at least one of the following conditions exist within the corridor along which the property is located:

1. The corridor or portion thereof to be rezoned contains a high concentration of vehicle sales and rental display lots and the concentration of vehicle sales and rental display lots has reached a level where it is discouraging, or with any increase is likely to discourage, further investment and reinvestment in other uses along the corridor.
2. The use of the required front yard for vehicle sales and rental display is contrary to the predominant character of the corridor or portion thereof to be rezoned and would detrimentally impact that character and property values along the corridor.

The city council, after review and recommendation by the plan and zoning commission, may consider removal of the “-V” extension designation from a specific parcel, if the council finds that the above conditions no longer exist or that the proposed use demonstrates provision of exceptional setbacks, landscaping and other site amenities that mitigate the visual impact of the vehicle sales and rental display lot from the corridor.”

Staff believes that it would be appropriate amend the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification for 4131 East 14th Street from Community Mixed Use to Industrial. Staff also believes that, in this instance, it would be appropriate to eliminate the “-V” designation since the property is surrounded by properties used for Vehicle Sales and Trucking and Transportation Terminal uses. The proposed use would not “discourage further investment and reinvestment in other uses along the corridor”. It is also not “contrary to the predominant character of the corridor or portion thereof to be rezoned and would detrimentally impact that character and property values along the corridor”.

2. **Planning and Design Ordinance:** Any development must comply with all applicable site plan and design regulations of the Planning and Design Ordinance (Chapter 135 of City Code). Should the rezoning be approved, the applicant would be required to prepare a Site Plan and building elevations for review.
3. **Grading & Storm Water Management:** Any grading is subject to an approved grading permit and soil erosion control plan, as well as a Stormwater Pollution Protection Plan (SWPPP) approved by the Iowa DNR. Tree removal and mitigation calculations must be submitted with any site plan in accordance with Section 42-550 of the Municipal Code.

### III. STAFF RECOMMENDATION

Part A) Staff recommends that the requested rezoning be found in conformance with the existing PlanDSM future land use designation of Industrial and Community Mixed Use.

Part B) Staff recommends approval of the requested amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification for 4131 East 14th Street from Community Mixed Use to Industrial.

Part C) Staff recommends approval of the requested rezonings, subject to the condition that any reuse, construction, or site improvements upon the properties shall be in accordance with a Site Plan that complies with all current regulations, including those pertaining to landscaping and screening.

### SUMMARY OF DISCUSSION

Dory Briles asked if any member of the public or the commission desired to speak on the item. No one requested to speak.

### COMMISSION ACTION:

Jann Freed made a motion for:

Part A) The requested rezoning be found in conformance with the existing PlanDSM future land use designation of Industrial and Community Mixed Use.

Part B) Approval of the requested amendment to the PlanDSM Creating Our Tomorrow Plan to revise the future land use classification for 4131 East 14th Street from Community Mixed Use to Industrial.

Part C) Approval of the requested rezoning, subject to the condition that any reuse, construction, or site improvements upon the properties shall be in accordance with a Site Plan that complies with all current regulations, including those pertaining to landscaping and screening.

**THE VOTE: 9-0**
NON-CONSENT AGENDA PUBLIC HEARING ITEMS

Item 4

Request from Oakview Terrace I, LP (owner), represented by J.B. Conlin (officer), for review and approval of a Public Hearing Site Plan “Oakview Terrace” for a Type 2 Design Alternative in accordance with City Code Sections 135-9-2.4(B) and 135-9-3.1(B), for property located at 3201 30th Street, to waive the required undergrounding of the utility service line to the northwestern building as required by Section 135-9.2.1(E).

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. Purpose of Request: Public Hearing Site Plan “Oakview Terrace” was previously approved with the following Type 2 Design Alternatives at the July 15, 2021 Plan and Zoning Commission meeting:

   A. Approval of the requested Type 2 Design Alternative to allow reconstruction of surface parking within front and side yard areas.

   B. A finding that it would not be reasonably practicable for the applicant to underground the transmission lines that run along the eastern, southern, and western edges of the site or to underground the service lines that provide power to the eastern buildings along the rear of the site.

      A finding that it would be reasonably practical for the applicant to underground the service lines that extend onto the site from 30th Street, which generally provide power to the western buildings and parking lot light poles.

   The applicant has returned to the Commission with a request to waive the required undergrounding of the utility service line that extends into the site from 30th Street to the northwestern building. Design alternative review criteria can be found in Section I, subparagraph 10 of this report. Staff analysis of the proposal can be found in Section II of the report.

2. Size of Site: 82,107 square feet (1.885 acres).


4. Existing Land Use (site): The property contains four (4) multifamily residential structures, with 32 units total on the site. There is also a surface parking lot and open space utilized by residents.

5. Adjacent Land Use and Zoning:
North – “NX2”; Uses are multifamily dwelling units.
South – “NX2”; Uses are multifamily dwelling units.
East – “NX2”; Use is a multifamily dwelling unit.
West – “N3b”; Uses are 30th Street and one-household dwelling units.

6. General Neighborhood/Area Land Uses: The subject property is located along 30th Street, in a residential area that includes a mix of housing typologies (single-family homes, duplexes, and larger multifamily residential buildings).

7. Applicable Recognized Neighborhood(s): The subject property is in the Prospect Park Neighborhood and within 250 feet of the Beaverdale Neighborhood. The neighborhood associations were notified of the public hearing by mailing of the Preliminary Agenda on July 30, 2021, and by mailing of the Final Agenda on August 13, 2021. Additionally, separate notifications of the hearing for this specific item were mailed on August 9, 2021 (10 days prior to the public hearing) to the neighborhood association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division on the date of the mailing. The Prospect Park Neighborhood mailings were sent to Mark Gordon, 2400 26th Street, Des Moines, IA 50310. The Beaverdale Neighborhood mailings were sent to Marcus Coenen, P.O. Box 30175, Des Moines, IA 50310.

8. Relevant Zoning History: None.


10. Applicable Regulations: Pursuant to Section 135-9.1.1.B of the Planning and Design Ordinance, the site plan review requirements of Chapter 135 are designed to ensure the orderly and harmonious development of property in a manner that shall:

   • Promote the most beneficial relation between present and proposed future uses of land and the present and proposed future circulation of traffic throughout the city;

   • Permit present development of property commensurate with fair and orderly planning for future development of other properties in the various areas of the city with respect to the availability and capacity, present and foreseeable, of public facilities and services. The factors to be considered in arriving at a conclusion concerning proposed present development of property shall include the following:
The maximum population density for the proposed development, the proposed density of use, and consideration of the effect the proposal will have on the capacity of existing water and sanitary sewer lines to the end that existing systems will not become overloaded or capacity so substantially decreased that site use will inhibit or preclude planned future development;

Zoning restrictions at the time of the proposal;

The city’s comprehensive plan;

The city’s plans for future construction and provision for public facilities and services; and

The facilities and services already available to the area which will be affected by the proposed site use;

Encourage adequate provision for surface and subsurface drainage, in order to ensure that future development and other properties in various areas of the city will not be adversely affected;

Provide suitable screening of parking, truck loading, refuse and recycling disposal, and outdoor storage areas from adjacent residential districts;

Encourage the preservation of canopied areas and mature trees and require mitigation for the removal of trees; and

Consider the smart planning principles set forth in Iowa Code Chapter 18B.

Based on Chapter Section 135-9.2.4 and 135-9.3.1.B of the Planning and Design Ordinance, Type 2 Design Alternatives are to be considered by the Plan and Zoning Commission after a public hearing whereby the following criteria are considered:

- The design alternative provisions of Section 135-9.2.4 are intended to authorize the granting of relief from strict compliance with the regulations of this chapter as part of the site plan or alternate design documentation review process when specific site features or characteristics of the subject property, including the presence of existing buildings, creates conditions that make strict compliance with applicable regulations impractical or undesirable. The design alternative provisions are also intended to recognize that alternative design solutions may result in equal or better implementation of the regulation’s intended purpose and greater consistency with the comprehensive plan.

- Consideration of requested design alternatives through the administrative and public hearing review processes will be evaluated on the merits of the
applicable request and independently of prior requests from the same applicant, and may include the following criteria:

- An evaluation of the character of the surrounding neighborhood, such as:
  - Whether at least 50% of the developed lots within 250 feet of the subject property are designed and constructed consistently with the requested design alternative(s); and
  - Whether the directly adjoining developed lots are designed and constructed consistently with the requested design alternative(s);

- For purposes of this subsection, if the lots that exist within 250 feet of the subject property are undeveloped, then the neighborhood character determination will be based upon the assumption that such lots, as if developed, comply with the applicable requirements of this chapter for which a design alternative(s) has been requested;

- The totality of the number and extent of design alternatives requested compared to the requirements of this chapter for each site plan or alternate design documentation reviewed;

- Whether the requested design alternative(s) is consistent with all relevant purpose and intent statements of this design ordinance and with the general purpose and intent of the comprehensive plan;

- Whether the requested design alternative(s) will have a substantial or undue adverse effect upon adjacent property, the character of the surrounding area or the public health, safety and general welfare;

- Whether any adverse impacts resulting from the requested design alternative(s) will be mitigated to the maximum extent feasible; and

- Other factors determined relevant by the community development director, plan and zoning commission, or city council as applicable.

II. ADDITIONAL APPLICABLE INFORMATION

Overhead Utility and Service Line Standards: Section 135-9.2.1.E of the Planning and Design Ordinance requires that all electrical, telephone, and cable television transmission systems shall be placed underground whenever reasonably practicable. The site is currently served by multiple electrical transmission lines that run along the eastern, southern, and western property edges, with small service lines to buildings or on-site light poles. The applicant has proposed to underground the service line to the southwestern building.

At the July 15, 2021 meeting, the Commission approved Staff’s recommendation to require the applicant to bury overhead lines that extend into the site from 30th Street and generally connect to the northwestern building and parking lot light poles. It was determined that it would not be reasonably practicable to require the applicant to
underground the remaining overhead lines on the site for logistical and financial reasons.

The applicant has returned to the Commission to request a Design Alternative because of unforeseen logistical issues and financial costs in undergrounding the overhead lines that run from 30th Street to the northwestern building.

The applicant has documented that the required asbestos remediation and interior building alterations resulting from the establishment of new utility service would require tenants to exit the premises for at least three months, posing major logistical and financial challenges for both tenants and the property owner. The applicant did not anticipate any new construction associated with Building N (northwestern building) before embarking on this project. The original scope of the project included general site improvements and interior work on Building L (southwestern building), which was damaged by fire.

Staff does not believe it would be reasonably practicable to require the lines running to the northwestern building to be undergrounded as a result of this new information. The applicant’s cost estimate of $80,000-$100,000 for construction/utility installation work, asbestos remediation, and tenant relocation/lease buyouts is above the normal utility undergrounding costs for work of similar scope, and particularly so for service lines to one residential building. This figure comprises about 13-17% of total project costs.

Staff is retaining the rest of the overhead utility line recommendations issued at the July 15, 2021 meeting. Staff still believes it is reasonably practicable to underground the remaining service lines that come out of the 30th Street right-of-way, transect the site, and connect to the parking lot light poles. Staff does not believe it is reasonably practicable to underground the larger transmission lines that run along the perimeter of the site, or the service lines that run power to the two buildings on the eastern edge of the property.

III. STAFF RECOMMENDATION

Staff recommends approval of the proposed Public Hearing Site Plan subject to compliance with all administrative review comments.

Staff recommends the approval of the requested Type 2 Design Alternative to waive the required undergrounding of the utility service line to the northwestern building.

SUMMARY OF DISCUSSION

Bert Drost presented the staff report and recommendation.

Doug Saltsgaver, 2413 Grand Ave, representing ERG, Inc., explained the cost estimates provided by MidAmerican Energy. He explained that the building is decades old and would require a new transformer and the electric meters to be moved outside. Each unit is individually metered, which means a new wiring would need to be ran from
each meter to each unit. The existing breaker boxes would need to be replaced and
current occupants would need to be relocated during necessary construction. Some
occupants have leases that last well into the future so the owner would have to buy out
and relocate those tenants for a projected 3 to 4 months while construction takes
place.

Todd Garner asked what improvements are being made to the apartment building that
is triggering the Site Plan.

Doug Saltsgaver stated there are no improvements being done to that building that is
connected to the overhead utilities. One of the other buildings on this property was
damaged by fire and the cost of those repairs are triggering the Site Plan.

CHAIRPERSON OPENED THE PUBLIC HEARING

Carol Maher, 701 Polk Blvd, stated she would like to see a bike rack at each building.
She stated that the driveway leading up to building M is in disrepair and that there is a
serious water leak in front of building N that she hopes will be addressed.

CHAIRPERSON CLOSED THE PUBLIC HEARING

COMMISSION ACTION:

Francis Boggus made a motion for approval of the proposed Public Hearing Site Plan
subject to compliance with all administrative review comments and approval of the
requested Type 2 Design Alternative to waive the required undergrounding of the utility service line to the northwestern building.

THE VOTE: 9-0

Item 5

Request from Best Food Mart Inc., represented by Natalie Carran (officer), for review
and approval of a Public Hearing Site Plan “A-Mart Convenience” for the following
Type 2 Design Alternatives and denied Type 1 Design Alternatives in accordance with
City Code Sections 135-9.2.4(B) and 135-9.3.1(B) on property located at 4028 East
14th Street, to allow expansion of a Commercial Cottage Building Type for Retail Sales,
Limited Use and Fueling Station. The subject property is owned by Bhajan Aulakh.
(10-2021-7.126)

A) Allow a primary frontage build-to-zone of approximately 72 feet, which is
approximately 52 feet beyond the maximum build-to-zone threshold of 20 feet,
per Section 135-2.6.3(A)(3).
B) Allow parking and fueling station parking to be located in the front yard and side yard instead of the required rear or limited side yard, per Section 135-2.6.3(A)(8).

C) Waive the requirement for all electric, phone, cable television, and transmission systems to be placed underground, per Section 135-9.2.1(E).

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. Purpose of Request: The proposed site plan would allow renovation of an existing 2,470-square foot Commercial Cottage building type for a Retail Sales, Limited use with a fueling station. The Site Plan would also allow for three parking stalls on the southern portion of the subject property and two stalls on the northern portion of the subject property, including the fueling station on the eastern portion of the subject property.

2. Size of Site: 72,000 square feet (1.653 acres).

3. Existing Zoning (site): “MX3-V” Mixed Use District, excluding vehicle sales.

4. Existing Land Use (site): The subject property contains an existing 2,470-square foot building with a retail sales/fueling stations, limited use.

5. Adjacent Land Use and Zoning:

   North – “I1-V”, Uses are light industrial.

   South – “MX3-V”, Use is commercial service and auto sales.

   East – “MX3-V”, Uses consist of commercial services.

   West – “N3a”, Use consists of vacant, undeveloped land.

6. General Neighborhood/Area Land Uses: The subject property is located along East 14th Street and is located within the Highland Park neighborhood.

7. Applicable Recognized Neighborhood(s): The subject property is in the Highland Park Neighborhood. All neighborhoods were notified of the Commission meeting by mailing of the Preliminary Agenda on August 5, 2021 and the Final Agenda on August 13, 2021. Additionally, separate notifications of the hearing for this specific item were mailed on August 9, 2021 (10 days prior to the hearing) to the neighborhood associations and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the requested rezoning.

   All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood
Development Division. The Highland Park Neighborhood Association mailings was sent to Sherri Rosener, at 1206 Oak Park Ave, Des Moines, IA 50313.

8. Relevant Zoning History: On November 9, 2020, the City Council adopted Ordinance No. 15,941 to rezone the property from “MX1-V” Mixed Use District to Limited “MX3-V” Mixed Use District subject to the following conditions:

A) The only Permitted and Conditional Uses on the Property shall be sales of packaged alcoholic liquor following and subject to approval of a Conditional Use by the Zoning Board of Adjustment, and those Permitted and Conditional Uses in common with and as limited by the MX1 Mixed Use District.

B) Accessory structures located on the Property shall be limited to those permitted in the MX1 Mixed Use District in accordance with Des Moines Municipal Code Chapter 135, Table 135-2.22-1.

On June 23, 2021, the Zoning Board of Adjustment approved a Conditional Use for the property to allow the sale of liquor, wine and beer, subject to the following conditions.

A) The sale of alcoholic liquor, wine and/or beer shall only be ancillary to a “Retail Sales, Limited” use, where no more than 40% of gross receipts from sales on the premises may be derived from the sale of alcoholic liquor, wine, beer and/or tobacco products.

B) The business selling alcoholic liquor, wine and/or beer shall operate in accordance with the necessary permit or license obtained through the Office of the City Clerk as approved by the City Council.

C) The business selling alcoholic liquor shall only display liquor in a locked case or behind a counter accessible only to employees, employ an electronic security cap or tag system on all containers of alcoholic liquor on display, or have more than one employee on duty at all times the business is open to the public.

D) The business shall conspicuously post 24-hour contact information for a manager or owner of the business near the main public entrance.

E) The business shall institute a strict no loitering policy, conspicuously post one or more "No Loitering" signs, and cooperate with police in addressing loitering on the premises.

F) The business shall not dispense alcoholic beverages from a drive-through window.

G) Litter and trash receptacles shall be located at convenient locations inside and outside the premises, and operators of the business shall remove all trash and debris from the premises and adjoining public areas on a daily basis.
H) Parking areas provided for the use of customers of the business shall be illuminated at an intensity of at least one footcandle of light on the parking surface at all times. The entire site shall be landscaped and illuminated so as to minimize hiding places for possible criminal activity.

I) Any construction on the site shall be in compliance with all applicable Building and Fire codes, with issuance of all necessary permits by the Permit and Development Center.

J) If the Zoning Enforcement Officer determines at any time that the operation of the business becomes a nuisance or exhibits a pattern of violating the conditions set forth in the Conditional Use or the requirements contained in City Code Section 134-3.8.1, the Zoning Enforcement Officer may apply to the Board to reconsider the issuance of the Conditional Use.


10. Applicable Regulations: Pursuant to Section 135-9.1.1.B of the Planning and Design Ordinance, the site plan review requirements of Chapter 135 are designed to ensure the orderly and harmonious development of property in a manner that shall:

- Promote the most beneficial relation between present and proposed future uses of land and the present and proposed future circulation of traffic throughout the city;

- Permit present development of property commensurate with fair and orderly planning for future development of other properties in the various areas of the city with respect to the availability and capacity, present and foreseeable, of public facilities and services. The factors to be considered in arriving at a conclusion concerning proposed present development of property shall include the following:

  - The maximum population density for the proposed development, the proposed density of use, and consideration of the effect the proposal will have on the capacity of existing water and sanitary sewer lines to the end that existing systems will not become overloaded or capacity so substantially decreased that site use will inhibit or preclude planned future development;

  - Zoning restrictions at the time of the proposal;

- The city’s comprehensive plan;

- The city’s plans for future construction and provision for public facilities and services; and
• The facilities and services already available to the area which will be affected by the proposed site use;

• Encourage adequate provision for surface and subsurface drainage, in order to ensure that future development and other properties in various areas of the city will not be adversely affected;

• Provide suitable screening of parking, truck loading, refuse and recycling disposal, and outdoor storage areas from adjacent residential districts;

• Encourage the preservation of canopied areas and mature trees and require mitigation for the removal of trees; and

• Consider the smart planning principles set forth in Iowa Code Chapter 18B.

Based on Chapter Section 135-9.2.4 and 135-9.3.1.B of the Planning and Design Ordinance, Type 2 Design Alternatives are to be considered by the Plan and Zoning Commission after a public hearing whereby the following criteria are considered:

• The design alternative provisions of Section 135-9.2.4 are intended to authorize the granting of relief from strict compliance with the regulations of this chapter as part of the site plan or alternate design documentation review process when specific site features or characteristics of the subject property, including the presence of existing buildings, creates conditions that make strict compliance with applicable regulations impractical or undesirable. The design alternative provisions are also intended to recognize that alternative design solutions may result in equal or better implementation of the regulation's intended purpose and greater consistency with the comprehensive plan.

• Consideration of requested design alternatives through the administrative and public hearing review processes will be evaluated on the merits of the applicable request and independently of prior requests from the same applicant, and may include the following criteria:

  ➢ An evaluation of the character of the surrounding neighborhood, such as:

    o Whether at least 50% of the developed lots within 250 feet of the subject property are designed and constructed consistently with the requested design alternative(s); and

    o Whether the directly adjoining developed lots are designed and constructed consistently with the requested design alternative(s);

• For purposes of this subsection, if the lots that exist within 250 feet of the subject property are undeveloped, then the neighborhood character determination will be based upon the assumption that such lots, as if
developed, comply with the applicable requirements of this chapter for which a design alternative(s) has been requested;

- The totality of the number and extent of design alternatives requested compared to the requirements of this chapter for each site plan or alternate design documentation reviewed;

- Whether the requested design alternative(s) is consistent with all relevant purpose and intent statements of this design ordinance and with the general purpose and intent of the comprehensive plan;

- Whether the requested design alternative(s) will have a substantial or undue adverse effect upon adjacent property, the character of the surrounding area or the public health, safety and general welfare;

- Whether any adverse impacts resulting from the requested design alternative(s) will be mitigated to the maximum extent feasible; and

- Other factors determined relevant by the community development director, plan and zoning commission, or city council as applicable.

II. ADDITIONAL INFORMATION

1. Design Alternatives Requested: The following Type 2 Design Alternatives have been requested:

   A) Allow the primary frontage build-to-zone to approximately 72 feet which is approximately 52 feet beyond the maximum build-to-zone threshold of 20 feet per Section 135-2.6.3.A.3. This would permit a longer distance between the primary street and the primary building frontage.

   B) Allow parking and fueling station parking to be located in the front yard instead of the required rear or limited side yard per Section 135-2.6.3.A.3. The fueling station with an associated canopy is located in the front yard of the subject property, located on the eastern portion of the subject property. This would permit the fueling station parking to stay in the front yard.

   C) Waive the requirement to underground all electric, phone, cable television, and transmission systems, per Section 135-9.2.1.E. This would permit the existing electrical and transmission lines to remain running overhead, along E 14th Street.

2. Staff Rationale: Staff is supportive of the applicant’s request to continue the public hearing on this item to the September 2, 2021 Plan and Zoning Commission meeting.
III. STAFF RECOMMENDATION

Staff recommends that the Commission continue this item to the September 2, 2021 meeting date to allow the applicant more time to receive the feasibility information regarding undergrounding of existing overhead utilities from MidAmerican Energy Company.

SUMMARY OF DISCUSSION

Dory Briles stated the applicant for item #5 has requested a continuance to the September 2, 2021 meeting of the Commission.

COMMISSION ACTION:

Abby Chungath made a motion to continue item #5 to the September 2, 2021 meeting of the Commission.

THE VOTE: 9-0

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Item 6

Request from John Collins (applicant) for review and approval of a Public Hearing Site Plan “Collins New and Used Tires” for the following Type 2 Design Alternatives in accordance with City Code Sections 135-9-2.4(B) and 135-9-3.1(B), on property located at 2266 Hubbell Avenue, to allow a building addition and other site improvements.

(10-2021-7.83)

A) Allow reduction of the window transparency on the primary façade from 65% to 17%, per Section 135-3.8.3.

B) Allow use of vinyl siding as a primary building material, per Section 135-4.1-1.

C) Allow retention of an existing 6-foot tall chain link fence along the perimeter of the site, per Section 135-7.7.

D) Allow overhead door on the primary façade facing Hubbell Avenue, per Section 135-2.9.3.A.8

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. Purpose of Request: The applicant is proposing to construct a 30-foot by 30-foot (approximately 900 square feet) garage addition to an existing vehicle
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Maintenance/Repair, Minor use at 2266 Hubbell Avenue, with frontage on Hubbell Avenue to the south and east, and Searle Street to the west. Design Alternative review criteria can be found in Section I, subparagraph 10 of this report. Staff analysis of the proposal can be found in Section II of the report.

2. **Size of Site:** 0.360 acres (approximately 15,681 square feet).

3. **Existing Zoning (site):** “MX3” Mixed Use District.

4. **Existing Land Use (site):** The current use is Collins New & Used Tires. No change in use proposed.

5. **Adjacent Land Use and Zoning:**
   - **North** – “MX3”; Use is a commercial building.
   - **South** – “I1”, Use is vehicle maintenance/repair.
   - **East** – “MX3”; Uses are retail and eating/drinking establishment.
   - **West** – “N3b”; Uses are one-household residential.

6. **General Neighborhood/Area Land Uses:** The subject property is located on the northeast corner of the intersection of Hubbell Avenue and Searle Street. The surrounding area contains a mix of commercial uses, including retail, eating/drinking establishments, and vehicle maintenance/repair, single-family residential, and a dairy.

7. **Applicable Recognized Neighborhood(s):** The subject property part of the Accent Neighborhood. The neighborhood association was notified of the public hearing by mailing of the Preliminary Agenda on July 30, 2021 and by mailing of the Final Agenda on August 13, 2021. Additionally, separate notifications of the hearing for this specific item were mailed on August 9, 2021 (10 days prior to the public hearing) to the Accent Neighborhood Association and to the primary titleholder on file with the Polk County Assessor for each property within 250 feet of the site.

   All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Accent Neighborhood Association mailings were sent to Kevin Marken, 2109 E 28th Street, Des Moines, IA 50317

8. **Relevant Zoning History:** None.

9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:** Commercial uses.

10. **Applicable Regulations:** Pursuant to Section 135-9.1.1.B of the Planning and Design Ordinance, the site plan review requirements of Chapter 135 are designed
to ensure the orderly and harmonious development of property in a manner that shall:

- Promote the most beneficial relation between present and proposed future uses of land and the present and proposed future circulation of traffic throughout the city;

- Permit present development of property commensurate with fair and orderly planning for future development of other properties in the various areas of the city with respect to the availability and capacity, present and foreseeable, of public facilities and services. The factors to be considered in arriving at a conclusion concerning proposed present development of property shall include the following:
  - The maximum population density for the proposed development, the proposed density of use, and consideration of the effect the proposal will have on the capacity of existing water and sanitary sewer lines to the end that existing systems will not become overloaded or capacity so substantially decreased that site use will inhibit or preclude planned future development;
  - Zoning restrictions at the time of the proposal;
  - The city's comprehensive plan;
  - The city's plans for future construction and provision for public facilities and services; and
  - The facilities and services already available to the area which will be affected by the proposed site use;
  - Encourage adequate provision for surface and subsurface drainage, in order to ensure that future development and other properties in various areas of the city will not be adversely affected;
  - Provide suitable screening of parking, truck loading, refuse and recycling disposal, and outdoor storage areas from adjacent residential districts;
  - Encourage the preservation of canopied areas and mature trees and require mitigation for the removal of trees; and
  - Consider the smart planning principles set forth in Iowa Code Chapter 18B.

Based on Chapter Section 135-9.2.4 and 135-9.3.1.B of the Planning and Design Ordinance, Type 2 Design Alternatives are to be considered by the Plan and Zoning Commission after a public hearing whereby the following criteria are considered:
- The design alternative provisions of Section 135-9.2.4 are intended to authorize the granting of relief from strict compliance with the regulations of this chapter as part of the site plan or alternate design documentation review process when specific site features or characteristics of the subject property, including the presence of existing buildings, creates conditions that make strict compliance with applicable regulations impractical or undesirable. The design alternative provisions are also intended to recognize that alternative design solutions may result in equal or better implementation of the regulation's intended purpose and greater consistency with the comprehensive plan.

- Consideration of requested design alternatives through the administrative and public hearing review processes will be evaluated on the merits of the applicable request and independently of prior requests from the same applicant, and may include the following criteria:
  
  - An evaluation of the character of the surrounding neighborhood, such as:
    - Whether at least 50% of the developed lots within 250 feet of the subject property are designed and constructed consistently with the requested design alternative(s); and
    - Whether the directly adjoining developed lots are designed and constructed consistently with the requested design alternative(s);
  
  - For purposes of this subsection, if the lots that exist within 250 feet of the subject property are undeveloped, then the neighborhood character determination will be based upon the assumption that such lots, as if developed, comply with the applicable requirements of this chapter for which a design alternative(s) has been requested;
    - The totality of the number and extent of design alternatives requested compared to the requirements of this chapter for each site plan or alternate design documentation reviewed;
    - Whether the requested design alternative(s) is consistent with all relevant purpose and intent statements of this design ordinance and with the general purpose and intent of the comprehensive plan;
    - Whether the requested design alternative(s) will have a substantial or undue adverse effect upon adjacent: property, the character of the surrounding area or the public health, safety and general welfare;
    - Whether any adverse impacts resulting from the requested design alternative(s) will be mitigated to the maximum extent feasible; and
    - Other factors determined relevant by the community development director, plan and zoning commission, or city council as applicable.
II. ADDITIONAL APPLICABLE INFORMATION

1. Fencing: The applicant requests a design alternative of the fence frontage buffer requirements per Section 135-7.7.2. The applicant has a pre-existing parking lot in the front of the building, surrounded by a six (6) foot high chain link fence. Applicant wishes to retain the fence for security reasons. Staff notes that despite this site having a previously approved site plan (10-09-7.29) which allowed an 8-foot tall chain link fence to be installed, the site is triggering full compliance review, as the addition is approximately 50 square feet larger than the existing building. Additionally, per Section 135-7.11.4.C, chain link fencing is prohibited in a front yard. While staff does empathize with wanting the fence for security reasons, typically these measures are to protect items stored outdoors. As this site does not have and can not propose outdoor storage, staff does not find the additional security measures are necessary to continue, and an ornamental fence should be installed to replace the existing chain link fence.

2. Building Design: The applicant requests three waivers or reductions to the building design.

   a. The first is a request to reduce the transparency requirements along street frontage facades per Section 135-2.5.3.D.18. The building is reviewed as a Storefront building type, which requires a minimum 65% transparency between 2 and 8 feet in height. The applicant is adding a garage for storage of tires and additional equipment necessary for installation of those tires. The applicant has included some amount of windows on the front garage door to 1) help provide visual interest to the façade and downplay the look of a garage door, and 2) to help bring the overall transparency of the front façade to 17%, 2% above minimum required for compliance with Section 135-2.5.3.D.19.

Understanding the previously mentioned security issues, that the applicant has made efforts to maximize the transparency when possible, and that the new area will not be utilized as an area where transparency is a preferred façade, staff is supportive of reducing the transparency required between 2 and 8 feet.

   b. The second request is to locate a new garage entrance location along a primary frontage. Section 135-4.3.8 provides details on how the city regulates garage door design and location. More specifically, Section 135-4.3.8.B stipulates how to review garages for Storefront buildings types, of which this site does not meet. From there, Section 135-4.3.8.C indicates that when a garage design does not meet those standards, it may be reviewed as a Type 1 if it is determined that the overall building design “adds emphasis to other façade elements that reduce attention, visibility, or dominance of the garage doors.” Based on that requirement, the proposed size of the garage door associated with this project does not meet those requirements, therefore requiring the Type 2 review of this proposed design. Additionally, the location
of the garage fronts a primary street (Hubbell Avenue) when a non-primary
frontage exists (Searle Street). However, access onto Searle Street is
challenging given the location of the garage, the angle of the building on the
site relative to Searle Street, and existing site trees along the northern edge
of the site. Additionally, Searle Street is a residential street, and staff does not
believe adding commercial traffic is either practicable or desirable to
residents. Therefore Staff is supportive of this location proposal.

The third request asks for a continuation of the use of vinyl siding similar to the existing
vinyl siding on the smaller garage. Per the minor façade materials table (135-4.2-2),
vinyl siding is not an allowed façade material on Storefront building types. Additionally,
vinyl siding does not assist in reducing the attention, dominance, or visibility of any
garage doors, whereas an approved material such as brick (which does exist as a
current façade material), or other masonry surface may provide better reduction efforts.
Additionally, with Hubbell Avenue being a primary frontage street, Section 135-2.1.6
requires staff to review that frontage with “the highest level of façade treatment.” Given
the staff support for reduced transparency and a garage location facing this street, staff
finds that more effort can and should be given to meeting the façade materials allowed
as either major or minor material.

III. STAFF RECOMMENDATION

Staff recommends approval of the Public Hearing Site Plan subject to the
following conditions:

1. The requested Design Alternatives and Public Hearing Site Plan Amendments
are subject to revision of the site plan and building elevations to comply with all
administrative review comments.

Staff recommends approval of the following Type 2 Design Alternatives:

A. Allow new garage door to face Hubbell Avenue.

B. Reduction in transparency requirements along all street frontages.

Staff recommends denial of the following Type 2 Design Alternatives:

A. Allowance of the six (6)-foot high Chain Link Fence as a fence frontage buffer.

B. Continuing the use of vinyl siding as a façade material.

SUMMARY OF DISCUSSION

Bert Drost presented the staff report and recommendation.

Todd Garner stated the agenda states vinyl siding would be used but the drawings
show cement board.
Bert Drost pointed out that the elevations show both vinyl and cement board and stated that the applicant can clarify where they want to use vinyl siding.

John Collins, 305 Kenyon Avenue, owner of Collins New and Used Tires, stated that using cement board siding wouldn’t be a problem. The current garage is vinyl and he would like the addition to match. The chain link fence along Hubbell Avenue is his main concern, as he has had people break into his property in the past, which necessitates the need to retain the chain link fence.

Dory Briles asked if he agreed to not use vinyl siding.

John Collins stated he would like to use vinyl, but that he would use cement board if that’s the Commission’s preference.

Chris Draper asked if he has looked into alternative fences and the cost associated with a new fence.

John Collins stated City staff doesn’t want a fence there at all.

Chris Draper asked City staff if the desire is to have no fence or if the desire is just to not have a chain link fence.

Bert Drost stated staff would prefer not to have a fence. The Planning & Urban Design Ordinance would allow a 3-foot decorative fence, but that would not provide the applicant with the security that they desire.

Chris Draper asked that if the crime concerns are valid, what is the City’s response to provide protection on the site.

Bert Drost stated there are other ways to provide security on site, such as using video cameras, motions sensors, and additional lighting.

**CHAIRPERSON OPENED THE PUBLIC HEARING**

No one was present or requested to speak.

**CHAIRPERSON CLOSED THE PUBLIC HEARING**

Chris Draper asked if the current security measures differ from other properties around this location.

Bert Drost showed the Commission the aerial photo of the area and couldn’t identify any other such fences in close proximity.

Chris Draper stated Anderson Erickson across Hubbell Avenue has a big walled complex and asked if it would be possible for the applicant to look at other fencing options.
Bert Drost stated staff’s recommendation would still be no fence but that the Commission would have the ability to allow a decorative rod iron fence instead of the existing chain link fence.

Chris Draper stated he hopes the business impact is taken in account if the crime issues were verifiable.

Bert Drost stated that Staff does have the ability to administratively grant a Type 1 design alternative that would allow a fence over 3 feet in height if Staff determined that such a fence would be compatible with the surrounding neighborhood.

Jann Freed stated she isn’t concerned about the fence with other alternatives for security.

Emily Webb stated she isn’t convinced the existing chain link fence is preventing crime.

COMMISSION ACTION:

Jann Freed made a motion for denial of the Type 2 Design Alternatives to allow the six (6)-foot high Chain Link Fence as a fence frontage buffer and to allow use of vinyl siding as a major façade material, and for approval of the Public Hearing Site Plan and Type 2 Design Alternatives to allow a new garage door to face Hubbell Avenue and to allow reduction in transparency requirements along all street frontages, subject to the condition the requested Design Alternatives and Public Hearing Site Plan are subject to revision of the site plan and building elevations to comply with all administrative review comments.

THE VOTE: 8-0-1 (Chris Draper abstained from the vote).

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Item 7

Request from Tasty King (business owner) represented by David York (officer), for review and approval of a Public Hearing Site Plan “Burger King on MLK” for the following Type 2 Design Alternatives in accordance with City Code Sections 135-9-2.4(B) and 135-9-3.1(B), on property located at 2222 Martin Luther King Jr. Parkway, to allow expansion of existing drive-through and other building improvements.

(10-2021-7.90)

A) Waiver of the requirement to underground the existing overhead utility lines along Martin Luther King, Jr. Parkway and Hickman Road required, per Section 135-9.2.1(E).

B) Allowance of drive-through facility on the front façade of the building when limited to an interior side or rear façade, per Section 135-2.22.3.D.
C) Waiver of streetscape requirements requiring full pavement, from pedestrian walk to curb, with tree beds, per Section 135-7.6.4.B.

STAFF REPORT TO THE PLANNING COMMISSION

I. GENERAL INFORMATION

1. Purpose of Request: The applicant is proposing to renovate the existing building and site. The value of the improvements that require building permits exceeds 50% of the assessed value of the building. As a result, the building and site must be brought into conformance with current standards. The applicant has requested waiver of four (4) requirements. Design alternative review criteria can be found in Section I, subparagraph 10 of this report. Staff analysis of the proposal can be found in Section II of this report.

2. Size of Site: 79,715 square feet or 1.83 acres.


4. Existing Land Use (site): The site contains a one-story commercial building with 3,791 square feet of gross floor area.

5. Adjacent Land Use and Zoning:
   - North – “MX3”; Uses are commercial in nature.
   - South – “MX3”; Uses are commercial in nature.
   - East – “MX3”; Uses are commercial in nature.
   - West – “MX3”; Uses are commercial in nature.

6. General Neighborhood/Area Land Uses: The subject property is located on the Martin Luther King, Jr. Parkway corridor, which contains a mix of commercial and residential uses including multi-family and single-family.

7. Applicable Recognized Neighborhood(s): The subject property is on the edge of Mondamin Presidential and Prospect Park Neighborhood Associations. All recognized neighborhood associations were notified of the meeting by mailing of the Preliminary Agenda on July 30, 2021 and by mailing of the Final Agenda on August 9, 2021. Additionally, separate notifications of the hearing for this specific item were mailed on August 9, 2021 (10 days prior) to the primary titleholder on file with the Polk County Assessor for each property adjoining the requested public right-of-way.

   All agendas and notices are mailed to the primary contact(s) designated by the recognized neighborhood association to the City of Des Moines Neighborhood Development Division. The Prospect Park Neighborhood mailings were sent to Mark Gordon, 2400 26th Street, Des Moines, IA 50310 and the Mondamin
Presidential Neighborhood mailings were sent to Terri Mitchell, 1822 Jefferson Avenue, Des Moines, IA 50314.

8. **Relevant Zoning History:** N/A.

9. **PlanDSM: Creating Our Tomorrow Plan Land Use Plan Designation:**
   Community Mixed Use within a Community Node.

10. **Applicable Regulations:** Pursuant to Section 135-9.1.1.B of the Planning and Design Ordinance, the site plan review requirements of Chapter 135 are designed to ensure the orderly and harmonious development of property in a manner that shall:

   - Promote the most beneficial relation between present and proposed future uses of land and the present and proposed future circulation of traffic throughout the city;

   - Permit present development of property commensurate with fair and orderly planning for future development of other properties in the various areas of the city with respect to the availability and capacity, present and foreseeable, of public facilities and services. The factors to be considered in arriving at a conclusion concerning proposed present development of property shall include the following:

     - The city’s comprehensive plan;
     - The city’s plans for future construction and provision for public facilities and services; and
     - The facilities and services already available to the area which will be affected by the proposed site use;
     - Encourage adequate provision for surface and subsurface drainage, in order to ensure that future development and other properties in various areas of the city will not be adversely affected;
     - Provide suitable screening of parking, truck loading, refuse and recycling disposal, and outdoor storage areas from adjacent residential districts;
     - Encourage the preservation of canopied areas and mature trees and require mitigation for the removal of trees; and
     - Consider the smart planning principles set forth in Iowa Code Chapter 18B.

Based on Chapter Section 135-9.2.4 and 135-9.3.1.B of the Planning and Design Ordinance, Type 2 Design Alternatives are to be considered by the Plan and Zoning Commission after a public hearing whereby the following criteria are considered:
• The design alternative provisions of Section 135-9.2.4 are intended to authorize the granting of relief from strict compliance with the regulations of this chapter as part of the site plan or alternate design documentation review process when specific site features or characteristics of the subject property, including the presence of existing buildings, creates conditions that make strict compliance with applicable regulations impractical or undesirable. The design alternative provisions are also intended to recognize that alternative design solutions may result in equal or better implementation of the regulation's intended purpose and greater consistency with the comprehensive plan.

• Consideration of requested design alternatives through the administrative and public hearing review processes will be evaluated on the merits of the applicable request and independently of prior requests from the same applicant, and may include the following criteria:

  ➢ An evaluation of the character of the surrounding neighborhood, such as:

    o Whether at least 50% of the developed lots within 250 feet of the subject property are designed and constructed consistently with the requested design alternative(s); and

    o Whether the directly adjoining developed lots are designed and constructed consistently with the requested design alternative(s);

• For purposes of this subsection, if the lots that exist within 250 feet of the subject property are undeveloped, then the neighborhood character determination will be based upon the assumption that such lots, as if developed, comply with the applicable requirements of this chapter for which a design alternative(s) has been requested;

  ➢ The totality of the number and extent of design alternatives requested compared to the requirements of this chapter for each site plan or alternate design documentation reviewed;

  ➢ Whether the requested design alternative(s) is consistent with all relevant purpose and intent statements of this design ordinance and with the general purpose and intent of the comprehensive plan;

  ➢ Whether the requested design alternative(s) will have a substantial or undue adverse effect upon adjacent: property, the character of the surrounding area or the public health, safety and general welfare;

  ➢ Whether any adverse impacts resulting from the requested design alternative(s) will be mitigated to the maximum extent feasible; and
➤ Other factors determined relevant by the community development director, plan and zoning commission, or city council as applicable.

II. ADDITIONAL APPLICABLE INFORMATION

1. Overhead Utility and Service Line Burial Requirement: Section 135-9.2.1.E of the Planning and Design Ordinance requires all electrical, telephone, and cable television transmission systems be placed underground whenever reasonably practical. There are existing overhead lines along the adjoining segment of Hickman Road and along the adjoining segment of Martin Luther King, Jr. Parkway that feed streetlights.

MidAmerican Energy provided cost and feasibility information on Tuesday July 2, 2021. They have indicated that to underground overhead primary and secondary lines, they would also need to replace four street light poles with underground feed and metal street light poles. The estimated cost for undergrounding the overhead utilities would be around $75,000.

Staff has requested additional information from MidAmerican Energy to understand the cost associated with just undergrounding the line that runs between the two light poles along Hickman Road and the line that crosses Martin Luther King, Jr. Parkway to feed a streetlight by the applicant’s site. Staff recommends that these two lines be undergrounded. Staff may issue an updated recommendation if information from MidAmerican Energy warrants it.

2. Drive-Through Facility: Section 135-2.22.3.D of the Planning and Design Ordinance requires drive-through facilities to be located on the side and rear facades of the building in that location. The proposed development consists of the reuse of a restaurant building that was constructed with a drive-through window on the north side of the building facing Hickman Road, with vehicle stacking on the east side of the building facing Martin Luther King, Jr. Parkway. Relocating the drive-through to the south façade is not practical, as there is an existing parking lot and the main building entrance. Placing the drive-through window on the rear façade is not practical either, as it would require significant reconfiguration of the building’s interior, relocation of the existing trash enclosure and grading. The applicant is proposing to add an additional stacking lane for the drive-through with a separate menu board. Landscaping and a patio space are proposed between the public sidewalk and the drive-through lane to provide a buffer. The requested design alternative would not have a substantial or undue adverse effect upon adjacent property, the character of the surrounding area or the public health, safety, and general welfare. Staff supports this Type 2 Design Alternative request.

3. Streetscape Requirement: Section 135-7.6.4.B of the Planning and Design Ordinance requires a fully paved parkway, from curb through sidewalk, with tree beds planted with street trees. The applicant is proposing to provide a class “A” walk with street trees along Martin Luther King, Jr. Parkway. The City’s Traffic and Transportation Division has indicated that SUDAS requires a 6-foot clear zone along the Martin Luther King Jr. frontage. Therefore, the proposed street trees will
need to be provided at the back of the walk. Staff will work with the applicant to address this engineering standard. The streetscape proposal for Martin Luther King, Jr. Parkway does not require a Type 2 Design Alternative.

The applicant is proposing to maintain the existing detached sidewalk along Hickman Road and to provide street trees. The site is located within “Community Node” as identified by Plan DSM, where dense, pedestrian-oriented development is expected to occur over time. The site is in a pedestrian heavy area that is served by two DART bus routes. Therefore, staff believes that a class “A” walk with street tree beds should be provided along Hickman Road.

III. STAFF RECOMMENDATION

Staff recommends approval of the proposed Public Hearing Site Plan subject to compliance with all administrative review comments and recommends the following as it relates to Design Alternatives:

A1. Staff recommends approval of a Type 2 Design Alternative to allow the utility pole at the west end of the Hickman Road frontage and overhead lines that feed it from the north to be retained.

A2. Staff recommends denial of a Type 2 Design Alternative to allow the overhead line that feeds the eastern streetlight pole along Hickman Road to be retained, thereby requiring it to be undergrounded.

A3. Staff recommends denial of a Type 2 Design Alternative to allow the overhead line that feeds the northern streetlight pole along Martin Luther King, Jr. Parkway to be retained, thereby requiring it to be undergrounded.

B. Staff recommends approval of the requested Type 2 Design Alternative to allow a drive-through facility on the front façade of the building.

C. Staff recommends denial of the requested Type 2 Design Alternative to waive the streetscape requirements requiring full pavement, from pedestrian walk to curb, with tree beds along Hickman Road.

SUMMARY OF DISCUSSION

Frank Dunn-Young presented the staff report and recommendation.

Abby Chungath asked if the estimated $75,000 from MidAmerican was for all electrical undergrounded or just the electrical staff is recommending approval on.

Frank Dunn-Young stated that estimate would be for all electrical to be undergrounded. For the electrical that Staff is asking to be undergrounded, the cost would be approximately $35,000 to $40,000.

David York, 12103 Branicole Ln, San Diego, CA, representing Tasty King, stated adding the dual lane drive-thru would increase their ability to serve customers, which
would decrease traffic in the parking lot, on Hickman Road, and on MLK, Jr. Parkway. They believe adding the pedestrian path from MLK, Jr. Parkway is in alignment with the City’s desire to make this a pedestrian corridor. The additional landscaping around the parking lot and the perimeter of the property would add screening to the property along with additional community improvement. They are concerned with undergrounding utilities along Hickman and MLK, Jr. Parkway from a financial standpoint. They believe leaving the sidewalk as is would be consistent with the sidewalk on the other side of Hickman Road and on the other side of their driveway.

Mark Gifftorn, 34 Three Wood Drive, Belleville, IL, stated they have allocated a certain amount of funds for this project and have tried to stay close to that with the improvements they’re proposing. The additional work being requested by City Staff would take them 20% over of the cost. They want this building to be upgraded but cannot feasibly spend the extra funds.

Jann Freed asked if they agree with the other recommendations by Staff.

Mark Gifftorn stated in regard to the landscaping, he would need to bid that out to see how much the additional cost would be.

Chris Draper asked if the waiver of part C in the staff recommendation was granted, that would bring them down to 10%.

Mark Gifftorn stated, yes, for the underground cables and the additional cost associated with the landscape upgrade.

Chris Draper asked if he was correct by saying if the waiver of part C is denied, it would cost an additional $35,000.

David York stated it would be over 10% for underground utilities and an estimated $25,000 for the sidewalk along Hickman Road.

Chris Draper asked if the utility pole along Hickman remains, would the new sidewalk run through the pole.

Frank Dunn-Young stated the standard streetscape would consist of 1-foot-wide strip of concrete along the curb, 5-foot-wide planters, and a 6-foot-wide sidewalk.

Chris Draper asked if Traffic and Transportation has weighed in on the impacts of additional landscaping along this intersection.

Frank Dunn-Young stated Traffic and Transportation did give them feedback along MLK, Jr. Parkway, which is why Staff agrees with the existing sidewalk remaining and placing street trees on the backside of the sidewalk.
CHAIRPERSON OPENED THE PUBLIC HEARING

Carol Maher, 701 Polk Blvd, stated she hopes the old light footings will be removed, along with the footing for the existing pole sign when it’s replaced with a monument sign. She would like them to incorporate pedestrian signage for drivers going through the drive thru.

CHAIRPERSON CLOSED THE PUBLIC HEARING

David York stated they are willing to provide signage in front of the pedestrian path. 2 of the 3 light pole footings would be removed and 1 would be reused for a new light pole. There would be no new monument sign, as they are not proposing anything that would require that.

Dory Briles asked city staff to clarify a monument sign isn’t required.

Frank Dunn-Young stated the requirement for a monument sign upgrade isn’t being triggered at this time.

Jann Freed asked if the Commission could be reminded how they’ve handled situations in the past regarding undergrounding utilities.

Bert Drost stated they look at each one on a case-to-case basis, but staff does try to stay consistent when analyzing the costs associated with the utility burial compared to the costs associated with the entire project.

Francis Boggus stated he would be sympathetic towards undergrounding utilities as they have waived others tonight and would like to encourage development in this area.

Emily Webb stated she would agree as this would be an improvement from what it is now.

Chris Draper stated it makes sense for the utility’s lines across MLK, Jr. Parkway to be undergrounded, but isn’t sure if the streetscape along Hickman makes sense.

Abby Chungath stated she agrees with Chris Draper’s assessment as she wouldn’t support denial of item C in the staff recommendation.

COMMISSION ACTION:

Chris Draper made a motion for approval of the proposed Public Hearing Site Plan subject to compliance with all administrative review comments, and for approval or denial of the requested Type 2 Design Alternatives as follows:

A1. approval of a Type 2 Design Alternative to allow the utility pole at the west end of the Hickman Road frontage and overhead lines that feed it from the north to be retained.
A2. denial of a Type 2 Design Alternative to allow the overhead line that feeds the eastern streetlight pole along Hickman Road to be retained, thereby requiring it to be undergrounded.

A3. denial of a Type 2 Design Alternative to allow the overhead line that feeds the northern streetlight pole along Martin Luther King, Jr. Parkway to be retained, thereby requiring it to be undergrounded.

B. approval of the requested Type 2 Design Alternative to allow a drive-through facility on the front façade of the building.

C. approval of the requested Type 2 Design Alternative to waive the streetscape requirements requiring full pavement, from pedestrian walk to curb, with tree beds along Hickman Road.

THE VOTE: 6-3 (Francis Boggus, Emily Webb, and Todd Garner voted in opposition).

Committee and Director’s Reports.

Meeting adjourned at 7:15pm